

WANG V. ASSET ACCEPTANCE, LLC (CASE NO. C09-04797 SI)
[PROPOSED] STIPULATED PROTECTIVE ORDER

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation would be warranted. Accordingly, the parties hereby
6 stipulate to and petition the Court to enter the following Stipulated Protective
7 Order. The parties acknowledge that this Order does not confer blanket protections
8 on all disclosures or responses to discovery and that the protection it affords
9 extends only to the limited information or items that are entitled under the
10 applicable legal principles to treatment as confidential. The parties further
11 acknowledge, as set forth in Section 10, below, that this Protective Order creates no
12 entitlement to file confidential information under seal; Civil Local Rule 79-5 sets
13 forth the procedures that must be followed and reflects the standards that will be
14 applied when a party seeks permission from the court to file material under seal.
15

16 2. DEFINITIONS

17 2.1 Party: any party to this action, including all of its officers,
18 directors, employees, consultants, retained experts, and outside counsel (and their
19 support staff).

20 2.2 Disclosure or Discovery Material: all items or information,
21 regardless of the medium or manner generated, stored, or maintained (including,
22 among other things, testimony, transcripts, or tangible things) that are produced or
23 generated in disclosures or responses to discovery in this matter.

24 2.3 “Confidential” Information or Items: information (regardless of
25 how generated, stored or maintained) or tangible things that qualify for protection
26 under standards developed under F.R.Civ.P. 26(c). Counsel shall not designate
27 discovery materials as “Confidential” without first making a good faith
28 determination that protection is warranted.

2.4 “Highly Confidential - Attorneys’ Eyes Only” Information or Items: extremely sensitive “Confidential Information or Items” whose disclosure to another Party or non-party would create a substantial risk of serious injury that could not be avoided by less restrictive means. Counsel shall not designate discovery materials as “Highly Confidential” without first making a good faith determination that protection is warranted.

2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.7 Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or Highly Confidential - Attorneys’ Eyes Only.”

2.8 Protected Material: any Disclosure or Discovery Material that is designated as “Confidential” or as “Highly Confidential - Attorneys’ Eyes Only.”

2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

2.10 House Counsel: attorneys who are employees of a Party.

2.11 Counsel: (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action and who is not a past or a current employee of a Party or a competitor of a Party’s. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g. photocopying; videotaping; translating; class administration; preparing exhibits or demonstrations; organizing, storing, retrieving data in any

1 form or medium; etc.) and their employees and subcontractors.

2
3 **3. SCOPE**

4 The protections conferred by this Stipulation and Order cover not only
5 Protected Material (as defined above), but also any information copied or extracted
6 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
7 testimony, conversations, or presentations by parties or counsel to or in court or in
8 other settings that might reveal Protected Material.

9
10 **4. DURATION**

11 Even after the termination of this litigation, the confidentiality obligations
12 imposed by this Order shall remain in effect until a Designating Party agrees
13 otherwise in writing or a court order otherwise directs.

14
15 **5. DESIGNATING PROTECTED MATERIAL**

16 5.1 Exercise of Restraint and Care in Designating Material for
17 Protection: Each Party or non-party that designates information or items for
18 protection under this Order must take care to limit any such designation to specific
19 material that qualifies under the appropriate standards. A Designating Party must
20 take care to designate for protection only those parts of material, documents, items,
21 or oral or written communications that qualify - so that other portions of the
22 material documents, items or communications for which protection is not warranted
23 are not swept unjustifiably within the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited.
25 Designations that are shown to be clearly unjustified, or that have been made for an
26 improper purpose (e.g. to unnecessarily encumber or retard the case development
27 process, or to impose unnecessary expenses and burdens on other parties), expose
28 the Designating Party to sanctions.

1 If it comes to a Party's or a non-party's attention that information or
2 items that it designated for protection do not qualify for protection at all, or do not
3 qualify for the level of protection initially asserted, that Party or non-party must
4 promptly notify all other parties that it is withdrawing the mistaken designation.

5 5.2 Manner and Timing of Designations: Except as otherwise
6 provided in this Order (see, e.g. second paragraph of section 5.2(a), below), or as
7 otherwise stipulated or ordered, material that qualifies for protection under this
8 Order must be clearly so designated before the material is disclosed or produced;
9 provided, however, that the parties agree that materials that have been produced by
10 the parties in this action prior to the entry of this Order may, within 14 days of the
11 entry of this Order, be designated as subject to the protections of this Order.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (apart from transcripts
14 of depositions or other pretrial or trial proceedings), that the Producing Party affix
15 the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS'
16 EYES ONLY" at the bottom of each page that contains protected material. If only
17 a portion of portions of the material on a page qualifies for protection, the
18 Producing Party also must clearly identify the protected portion(s) (e.g., by making
19 appropriate markings in the margins) and must specify, for each portion, the level
20 of protection being asserted (either "CONFIDENTIAL" or "HIGHLY
21 CONFIDENTIAL - ATTORNEYS' EYES ONLY").

22 A Party or non-party that makes original documents or materials
23 available for inspection need not designate them for protection until after the
24 inspecting Party has indicated which material it would like copied and produced.
25 During the inspection and before the designation, all of the material made available
26 for inspection shall be deemed "HIGHLY CONFIDENTIAL - ATTORNEYS'
27 EYES ONLY." After the inspecting Party has identified the document it wants
28 copied and produced, the Producing Party must determine which documents, or

1 portions thereof, qualify for protection under this Order, then, before producing the
2 specified documents, the Producing Party must affix the appropriate legend
3 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
4 ONLY”) at the bottom of each page that contains Protected Material. If only a
5 portion or portions of the material on a page qualifies for protection, the Producing
6 Party also must clearly identify the protected portion(s) (e.g., by making
7 appropriate markings in the margins) and must specify, for each portion, the level
8 of protection being asserted (either “CONFIDENTIAL” or “HIGHLY
9 CONFIDENTIAL - ATTORNEYS’ EYES ONLY”).

10 (b) for testimony given in deposition or in other pretrial or trial
11 proceedings, that the Party or non-party offering or sponsoring the testimony
12 identify on the record, before the close of the deposition, hearing, or other
13 proceeding, all protected testimony, and further specify any portions of the
14 testimony that qualify as “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
15 ONLY.” When it is impractical to identify separately each portion of testimony
16 that is entitled to protection, and when it appears that substantial portions of the
17 testimony may qualify for protection, the Party or non-party that sponsors, offers,
18 or gives the testimony may invoke on the record (before the deposition or
19 proceeding is concluded) a right to have up to 20 days from the date of receipt of
20 the transcript to identify the specific portions of the testimony as to which
21 protection is sought and to specify that level of protection being asserted
22 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
23 ONLY”). Only those portions of the testimony that are appropriately designated
24 for protection within the 20 days shall be covered by the provisions of this
25 Stipulated Protective Order.

26 Transcript pages containing Protected Material must be
27 separately bound by the court reporter, who must affix to the top of each such page
28 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’

1 EYES ONLY,” as instructed by the Party or non-party offering or sponsoring the
2 witness or presenting the testimony.

3 (c) for information produced in some form other than
4 documentary, and for any other tangible items, that the Producing Party affix in a
5 prominent place on the exterior of the container or containers in which the
6 information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
7 CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” If only portions of the
8 information or item warrant protection, the Producing Party, to the extent
9 practicable, shall identify the protected portions, specifying whether they qualify as
10 “Confidential” or as “Highly Confidential - Attorneys’ Eyes Only.”

11 5.3 Inadvertent Failures to Designate: If timely corrected, an
12 inadvertent failure to designate qualified information or items as “Confidential” or
13 “Highly Confidential - Attorneys’ Eyes Only” does not, standing alone, waive the
14 Designating Party’s right to secure protection under this Order for such material. If
15 material is appropriately designated as “Confidential” or “Highly Confidential -
16 Attorneys’ Eyes Only” after the material was initially produced, the Receiving
17 Party, on timely notification of the designation, must make reasonable efforts to
18 assure that the material is treated in accordance with the provisions of this Order.

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges: Unless a prompt challenge to a
22 Designating Party’s confidentiality designation is necessary to avoid foreseeable
23 substantial unfairness, unnecessary economic burdens, or a later significant
24 disruption or delay of the litigation, a Party does not waive its right to challenge a
25 confidentiality designation by electing not to mount a challenge promptly after the
26 original designation is disclosed.

27 6.2 Meet and Confer: A Party that elects to initiate a challenge to a
28 Designating Party’s confidentiality designation must do so in good faith and must

begin the process by conferring directly or in writing with counsel for the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

6.3 Judicial Intervention: A party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity the justification for the confidentiality designation that was given by the Designating Party in the meet and confer dialogue.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Designating Party's designation.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles: A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 11,

1 below (FINAL DISPOSITION).

2 Protected Material must be stored and maintained by a Receiving
3 Party at a location and in a secure manner that ensures that access is limited to the
4 persons authorized under this Order.

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items: Unless
6 otherwise ordered by the court or permitted in writing by the Designating Party, a
7 Receiving Party may disclose any information or item designated
8 CONFIDENTIAL only to:

9 (a) the Receiving Party’s Outside Counsel of record in this
10 action, as well as employees of said Counsel to whom it is reasonably necessary to
11 disclose the information for this litigation and who have signed the “Agreement to
12 Be Bound by Protective Order” that is attached hereto as Exhibit A;

13 (b) the officers, directors, and employees (including House
14 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
15 this litigation and who signed the “Agreement to Be Bound by Protective Order”
16 (Exhibit A);

17 (c) experts (as defined in this Order) of the Receiving Party to
18 whom disclosure is reasonably necessary for this litigation and who have signed
19 the “Agreement to Be Bound by Protective Order” (Exhibit A);

20 (d) the Court and its personnel;

21 (e) court reporters, their staffs, and professional vendors to
22 whom disclosure is reasonably necessary for this litigation and who have signed
23 the “Agreement to Be Bound by Protective Order” (Exhibit A);

24 (f) during their depositions, witnesses in the action to whom
25 disclosure is reasonably necessary and who have signed the “Agreement to be
26 Bound by Protective Order” (Exhibit A). Pages of transcribed deposition testimony
27 or exhibits to depositions that reveal Protected Material must be separately bound
28 by the court reporter and may not be disclosed to anyone except as permitted under

1 this Stipulated Protective Order.

2 (g) the author of the document or the original source of the
3 information.

4 7.3 Disclosure of “HIGHLY CONFIDENTIAL - ATTORNEYS’
5 EYES ONLY” Information or Items: Unless otherwise ordered by the court or
6 permitted in writing by the Designating Party, a Receiving Party may disclose any
7 information or item designated “HIGHLY CONFIDENTIAL - ATTORNEYS’
8 EYES ONLY” only to:

9 (a) the Receiving Party’s Outside Counsel of record in this
10 action, as well as employees of said Counsel to whom it is reasonably necessary to
11 disclose the information for this litigation and who signed the “Agreement to Be
12 Bound by Protective Order” that is attached hereto as Exhibit A;

13 (b) Experts (as defined in this Order) (1) to whom disclosure is
14 reasonably necessary for this litigation, (2) who have signed the “Agreement to Be
15 Bound by Protective Order” (Exhibit A), and (3) as to whom the procedures set
16 forth in paragraph 7.4, below, have been followed;

17 (c) the Court and its personnel;

18 (d) court reporters, their staffs, and professional vendors to
19 whom disclosure is reasonably necessary for this litigation and who have signed
20 the “Agreement to Be Bound by Protective Order” (Exhibit A); and

21 (e) the author of the document or the original source of the
22 information.

23 7.4 Procedures for Approving Disclosure of “HIGHLY
24 CONFIDENTIAL - ATTORNEYS’ EYES ONLY” Information or Items to
25 “Experts”

26 (a) Unless otherwise ordered by the court or agreed in writing
27 by the Designating Party, a Party that seeks to disclose to an “Expert” (as defined
28 in this Order) any information or item that has been designated “HIGHLY

1 CONFIDENTIAL - ATTORNEYS' EYES ONLY" first must make a written
2 request to the Designating Party that (1) identifies the specific HIGHLY
3 CONFIDENTIAL information that the Receiving Party seeks permission to
4 disclose to the Expert, (2) sets forth the full name of the Expert and the city and
5 state of his or her primary residence, (3) attaches a copy of the Expert's current
6 resume, (4) identifies the Expert's current employer(s), (5) identifies each person or
7 entity from whom the Expert has received compensation for work in his or her
8 areas of expertise or to whom the expert has provided professional services at any
9 time during the preceding five years, and (6) identifies (by name and number of the
10 case, filing date, and location of court) any litigation in connection with which the
11 Expert has provided any professional services during the preceding five years.

12 (b) A Party that makes a request and provides the information
13 specified in the preceding paragraph may disclose the subject Protected Material to
14 the identified Expert unless, within seven days of delivering the request, the Party
15 receives a written objection from the Designating Party. Any such objection must
16 set forth in detail the grounds on which it is based.

17 (c) A Party that receives a timely written objections must meet
18 and confer with the Designating Party (through direct voice to voice dialogue) to
19 try to resolve the matter by agreement. If no agreement is reached, the Party
20 seeking to make the disclosure to the Expert may file a motion as provided in Civil
21 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking
22 permission from the court to do so. Any such motion must describe the
23 circumstances with specificity, set forth in detail the reasons for which the
24 disclosure to the Expert is reasonably necessary, assess the risk of harm that the
25 disclosure would entail and suggest any additional means that might be used to
26 reduce that risk. In addition, any such motion must be accompanied by a
27 competent declaration in which the movant describes the parties' efforts to resolve
28 the matter by agreement (i.e., the extent and the content of the meet and confer

1 discussions) and sets forth the reasons advanced by the Designating Party for its
2 refusal to approve the disclosure.

3 In any such proceeding the Party opposing disclosure to the
4 Expert shall bear the burden of proving that the risk of harm that the disclosure
5 would entail (under the safeguards proposed) outweighs the Receiving Party's need
6 to disclose the Protected Material to its Expert.

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8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
9 PRODUCED IN OTHER LITIGATION

10 If a Receiving Party is served with a subpoena or an order issued in other
11 litigation that would compel disclosure of any information or items designated in
12 this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -
13 ATTORNEYS' EYES ONLY," the Receiving Party must so notify the Designating
14 Party, in writing (by fax, if possible) immediately and in no event more than three
15 court days after receiving the subpoena or order. Such notification must include a
16 copy of the subpoena or court order.

17 The Receiving Party also must immediately inform in writing the Party who
18 caused the subpoena or order to issue in the other litigation that some or all the
19 material covered by the subpoena or order is the subject of this Protective Order.
20 In addition, the Receiving Party must deliver a copy of this Stipulated Protective
21 Order promptly to the Party in the other action that caused the subpoena or order to
22 issue.

23 The purpose of imposing these duties is to alert the interested parties to the
24 existence of this Protective Order to afford the Designating Party in this case an
25 opportunity to try to protect its confidentiality interests in the court from which the
26 subpoena or order issued. The Designating Party shall bear the burdens and the
27 expenses of seeking protection in that court of its confidential material - and
28 nothing in these provisions should be construed as authorizing or encouraging a

1 Receiving Party in this action to disobey a lawful directive from another court.

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3 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has
5 disclosed Protected Material to any person or in any circumstance not authorized
6 under this Stipulated Protective Order, the Receiving Party must immediately (a)
7 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
8 best efforts to retrieve all copies of the Protected Material, (c) inform the person or
9 persons to whom unauthorized disclosures were made of all the terms of this Order,
10 and (d) request such person or persons to execute the “Acknowledgment and
11 Agreement to Be Bound” that is attached hereto as Exhibit A.

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13
14 10. FILING PROTECTED MATERIAL

15 Without written permission from the Designating Party or a court order
16 secured after appropriate notice to all interested persons, a Party may not file in the
17 public record in this action any Protected Material. A Party that seeks to file under
18 seal any Protected Material must comply with Civil Local Rule 79-5.

19
20 11. FINAL DISPOSITION

21 Unless otherwise ordered or agreed in writing by the Producing Party, within
22 sixty (60) days after the final termination of this action, each Receiving Party must
23 return all Protected material to the Producing Party. As used in this subdivision,
24 “all Protected Material” includes all copies, abstracts, compilations, summaries or
25 any other form of reproducing or capturing any of the Protected Material. With
26 permission in writing from the Designating Party, the Receiving Party may destroy
27 some or all of the Protected Material instead of returning it. Whether the Protected
28 Material is returned or destroyed, the Receiving Party must submit a written

1 certification to the Producing Party (and, if not the same person or entity, to the
2 Designating Party) by the sixty day deadline that identifies (by category, where
3 appropriate) all the Protected material that was returned or destroyed and that
4 affirms that the Receiving Party has not retained any copies, abstracts,
5 compilations, summaries or other forms of reproducing or capturing any of the
6 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
7 any archival copy of all pleadings, motion papers, transcripts, legal memoranda,
8 correspondence or attorney work product, even if such materials contain Protected
9 Material. Any such archival copies that contain or constitute Protected Material
10 remain subject to this Protective Order as set forth in Section 4 (DURATION),
11 above.

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13 12. MISCELLANEOUS

14 12.1 Right to Further Relief: Nothing in this Order abridges the right
15 of any person to seek its modification by the Court in the future.

16 12.2 Right to Assert Other Objections: By stipulating to the entry of
17 this Protective Order no Party waives any right it otherwise would have to object to
18 disclosing or producing any information or item on any ground not addressed in
19 this Stipulated Protective Order. Similarly, no Party waives any right to object on
20 any ground to use in evidence of any of the material covered by this Protective
21 Order.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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3

4 DATED: 4/5/2010 s/Harry Shulman/
5 Attorneys for Plaintiff
6 Johnny Wang

7 DATED: 4/5/2010 s/Tomio B. Narita
8 Attorneys for Defendant
9 Asset Acceptance, LLC

10 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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14 DATED: _____



15 Honorable Susan Illston
16 United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ (print or type full name), of _____
(print or type full address), declare under penalty of perjury that I have read in its
entirety and understand the Stipulated Protective Order that was issued by the
United States District Court for the Northern District of California on _____
[date] in the case of *Wang v. Asset Acceptance, LLC* Case No. C09-04797 SI. I
agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose me
to sanctions and punishment in the nature of contempt. I solemnly promise that I
will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with
the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Northern District of California for the purpose of enforcing the terms
of this Stipulated Protective Order, even if such enforcement proceedings occur
after termination of this action.

I hereby appoint _____ [print or type full
name] of _____ [print or type full address and tel.
number] as my California agent for service of process in connection with this
action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____